

## **MINUTES OF THE CITY COUNCIL**

**SAN JOSE, CALIFORNIA**

**TUESDAY, JUNE 6, 1995**

The Council of the City of San Jose convened in regular session at 9:00 a.m.

Present: Council Members - Dando, Diaz, Diquisto, Fernandes, Fiscalini, Johnson, Pandori, Powers, Shirakawa, Jr., Woody; Hammer.

Absent: Council Members - None.

Upon motion unanimously adopted, Council recessed to a Closed Session at 9:05 a.m. in Room 600 to discuss the Public Employee Performance Evaluation of the City Attorney pursuant to Government Code Section 54957.

By unanimous consent, Council reconvened from the Closed Session and recessed at 11:00 a.m. and reconvened at 1:38 p.m. in Council Chambers, City Hall.

Present: Council Members - Dando, Diaz, Diquisto, Fiscalini, Johnson, Pandori, Powers, Shirakawa, Jr., Woody; Hammer.

Absent: Council Members - Fernandes (excused).

### **INVOCATION**

Dr. Pedro Caceres, Immanuel Evangelical Lutheran Church of San José, delivered the invocation. (District 6)

### **PLEDGE OF ALLEGIANCE**

Mayor Hammer led in the Pledge of Allegiance.

### **ORDERS OF THE DAY**

Upon motion by Council Member Powers, seconded by Council Member Fernandes and unanimously carried, the Orders of the Day and the Amended Agenda were approved. Vote: 10-0-1-0. Absent: Fernandes.

## CEREMONIAL ITEMS

- 5a Presentation of posthumous commendation to Sergeant Richard Reyes, San José Police Department; co-founder of the Latino Peace Officers Association; for his community involvement and outstanding efforts in the recruitment of minorities in law enforcement. (Diaz)**

Documents Filed: None.

Discussion/Action: This item was deferred to June 20, 1995.

- 5b Presentation of proclamation declaring the week of June 12-16, 1995 as “Filipino-American Friendship Week.” (Mayor)**

Documents Filed: None.

Discussion/Action: Joining Mayor Hammer at the podium and accepting the proclamation, Reynoldo G. Tolentino, President of the Filipino-American City Employees of San Jose, and Rodolfo D. Torres, Public Relations Officer for the Filipino-American City Employees of San Jose, invited all citizens to share in the Philippine Independence Day festivities on June 12, 1995.

- 5c Presentation of commendations to schools in the City of San José which have been honored as California Distinguished Schools. (Woody)**

Documents Filed: None.

Discussion/Action: Joining Mayor Hammer at the podium, Council Member Woody congratulated 14 schools in the Evergreen District on receiving the California Distinguished School Award; congratulated the 4 Evergreen District schools who were honored as U.S. Department of Education Blue Ribbon Schools on the basis of demonstrating strong academic programs and learning environment and parent/community involvement; and presented the commendation to James F. Smith, Superintendent of the Evergreen School District, and Jeff Fischer, President of the Governing Board of Trustees, who thanked the City Council for its continued support. Mayor Hammer joined Council Member Woody in presenting commendations to and congratulating each of the following: Susan Hanna, Principal, Cadwallader School; Evelyn Ortiz-Stanley, Principal, Dove Hill School; John Shaw, Principal, Evergreen School; Mercedes Boles, Principal, Holly Oak School; Carole Martin, Principal, John Montgomery School; and Dr. Robert Pruitt, Principal, Laurelwood School. Honoring District 1 recipients of the California Distinguished Schools award, Vice Mayor

**5c (Cont'd.)**

Johnson joined Mayor Hammer at the podium and acknowledged the School District Superintendents who were unable to attend, and presented commendations to Principal Andy Mortenson, DeVargas School, Cupertino Union School District; Principal Barry Vitcov, Leroy Anderson School, Moreland School District; and Principal Mary Mulholland, Gussie M. Baker School, Moreland School District. In recognition of District 10 honorees, Council Member Dando joined Mayor Hammer at the podium and presented the commendation to Bev Shaw, Principal of Guadalupe School, and Janice Hector, President of the Governing Board, Union School District. Joining Mayor Hammer at the podium, Council Member Fiscalini congratulated Bagby School on its accomplishments and presented the commendation to Principal Patricia Pooley, and to Richard Windell, Assistant Superintendent of D.M. Bagby School, Cambrian School District. Council Member Powers expressed appreciation to Superintendent Smith and the Evergreen School Governing Board for making classrooms available to students from Santa Teresa Elementary School, Oak Grove School District, during the recent fire which caused significant damage to the facility.

Special "slide show presentation" by City-sponsored City Year Team--17 to 20 year olds who perform national community services for monetary or academic credit--under the direction of Development Coordinator Ian Fisk and Team Leader Jose Montes de Oca, starring Corps Members Adrianna Rivas, Robert Fernandes, Ann Marie Cleveland, Francisco Regalado, Dena Goledrige, Aregesh Neguse, Tony Santa Ana, Pedro Perales, Josie Barajas, and David Rebel.

**FISCAL AFFAIRS**

- 10b Final PUBLIC HEARING to adopt a resolution for the levy of assessments for Fiscal Year 1995-96 for the Willow Glen Business Improvement District and approval of the Willow Glen BID Budget Report for Fiscal Year 1995-96, as filed or as modified by Council. CEQA: Exempt. Office of Economic Development)**

Documents Filed: Memorandum from Assistant Director Economic Development, Pamela K. Stone, dated May 19, 1995, recommending Council approve the budget report as filed or as modified by Council, and adopt said resolution.

Discussion/Action: Mayor Hammer opened the final public hearing on the Budget Report and levy of annual BID assessments for said District. Demetrias Riszos, President of Willow Glen Business and Professional Associations, addressed Council on the Renaissance of the Avenue in Willow Glen. Assistant Director of Economic Development Pamela Stone reported that no oral or written protests against the

**10b (Cont'd.)**

continued authorization of the BID were received prior to the scheduled public hearing. Upon motion by Council Member Fiscalini, seconded by Vice Mayor Johnson and unanimously carried, the public hearing was closed and Resolution No. 65942, entitled: "Resolution of the City of San Jose Approving the Budget Report of the Willow Glen Business Improvement District For Fiscal Year 1995-96 and Levying Assessments in the District For Fiscal Year 1995-1996", was adopted. Vote: 10-0-1-0. Absent: Fernandes.

**10a Final PUBLIC HEARING to adopt a resolution for the levy of assessments for Fiscal Year 1995-96 for the Downtown Business Improvement District and approval of the Downtown BID Budget Report for Fiscal Year 1995-96, as filed or as modified by Council. CEQA: Exempt.  
(Convention, Cultural and Visitor Services)**

Documents Filed: Memorandum from Director of Convention, Cultural and Visitor Services, Ellen Oppenheim, dated May 19, 1995, recommending Council approve the Downtown BID budget report and adopt said resolution.

Discussion/Action: Mayor Hammer opened the final public hearing on the BID budget report and Fiscal Year 1995-96 levy of assessments for said District. There was no discussion from the Floor; however, Assistant Director of Economic Development, Pamela Stone, reported that prior to the scheduled public hearing the City Clerk had not received oral or written protests against the continued authorization of the BID. Upon motion by Council Member Pandori, seconded by Council Member Shirakawa, Jr. and unanimously carried, the public hearing was closed and Resolution No. 65941, entitled: "Resolution of the City of San Jose Approving the Budget Report of the Downtown Business Improvement District for Fiscal Year 1995-96 and Levying Assessments in the District for Fiscal Year 1995-1996", was adopted. Vote: 10-0-1-0. Absent: Fernandes.

**CONSENT CALENDAR**

Upon motion by Council Member Fiscalini, seconded by Council Member Powers and unanimously carried, the Consent Calendar was approved and the below listed actions were taken as indicated. Vote: 10-0-1-0. Absent: Fernandes.

## Minutes for Approval

### 6a(1) Regular Meeting of May 2, 1995

Documents Filed: Minutes of May 2, 1995.

Discussion/Action: The Minutes were approved. Vote: 10-0-1-0. Absent: Fernandes.

## Ordinances for Final Adoption

- 6b(1) **ORD. NO. 24910** - Amends Section 2.08.070 of Chapter 2.08 of Title 2 of the San José Municipal Code to revise the conditions which would result in an automatic resignation of a member of a board or commission who is a City Council Member or City employee and amending and renumbering Section 13.48.030 of Chapter 13.48 of Title 13 to make the Section a part of Title 2.

Documents Filed: Proof of publication of the title of Ordinance No. 24910 submitted by the City Clerk.

Discussion/Action: Ordinance No. 24910 was adopted. Vote: 10-0-1-0. Absent: Fernandes.

- 6b(2) **ORD. NO. 24911** - Amends Section 17.78.280 of Chapter 17.78 of Title 17 of the San José Municipal Code to authorize the Fire Chief to extend the final date for compliance with Chapter 17.78 of the Code (Toxic Gas requirements) to December 8, 1995.

Documents Filed: Proof of publication of the title of Ordinance No. 24911 submitted by the City Clerk.

Discussion/Action: Ordinance No. 24911 was adopted. Vote: 10-0-1-0. Absent: Fernandes.

- 6b(3) **ORD. NO. 24899** - Establishes the procedures and methodology for transportation analysis in the Evergreen Development Policy Area.  
[Deferred from 5/23/95 and 5/30/95 - Item 6b(8)]

Documents Filed: None.

Discussion/Action: This item was deferred to June 13, 1995.

## **Contracts/Agreements**

- 6e(1) Approval of a third amendment to the master lease agreement with ACM Aviation, Inc., to provide:**
- (a) Ten (10) year extension of term to June 30, 2006.**
  - (b) Phased rental-rate increases to bring rents up to market rates.**
  - (c) Authorization for the Director of Aviation to approve subleases to comply with the uses listed in the master lease agreement.**
- CEQA: Exempt. (Airport)**

Documents Filed: Memorandum from Director of Aviation, Ralph G. Tonseth, dated May 19, 1995, recommending approval of the third amendment to said Master Lease.

Discussion/Action: The third amendment to the master lease agreement with ACM Aviation, Inc. was approved and its execution authorized. Vote: 10-0-1-0. Absent: Fernandes.

- 6e(2) Approval of a grant agreement with the Community Foundation of Santa Clara County in the amount of \$25,000 to provide seed funding for art project fundraising. (Convention, Cultural and Visitor Services)**

Documents Filed: Memorandum from Director of Convention, Cultural and Visitor Services, Ellen Oppenheim, dated May 19, 1995, recommending approval of said grant agreement.

Discussion/Action: The grant agreement with the Community Foundation of Santa Clara County was approved and its execution authorized. Vote: 10-0-1-0. Absent: Fernandes.

- 6e(3) Approval of:**
- (a) First amendment to group dental agreement with Dental Benefit Providers of California for prepaid dental plan services for the period April 1, 1995 to June 30, 1996 to include sterilization procedures as a prepaid service; and**
  - (b) An agreement with Dental Benefit Providers of California to administer orthodontic cases approved prior to April 1, 1995 for the period July 1, 1995 to June 30, 1996.**
- (Human Resources)**

Documents Filed: Memorandum from Director of Human Resources, Nona Tobin, dated May 19, 1995, recommending Council approve said amendment and agreement.

**6e(3) (Cont'd.)**

Discussion/Action: The first amendment to the group dental agreement with Dental Benefit Providers of California was approved and its execution authorized, and Council action on the agreement with Dental Benefit Providers of California, Item 6e(3)(b), was deferred to June 13, 1995. Vote: 10-0-1-0. Absent: Fernandes.

**6e(4) Report on bids and award of contract for the Airport Tower Demolition Project to the low bidder and approval of a contingency of 20 percent. CEQA: Exempt. (Public Works)**

Documents Filed: None.

Discussion/Action: This item was deferred to June 20, 1995.

**6e(5) Approval of a first amendment to the lease agreement with Acacia Associates for office space located on the Plaza level of 4 North Second Street, increasing the square footage to be leased by 1,499 square feet, from 1,383 square feet to 2,882 square feet, and extending the term of the agreement by 71 months to June 30, 2000, with a new rental rate of \$3,314.30 per month commencing July 1, 1995. CEQA: Exempt. (Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls Jr., dated May 19, 1995, recommending Council approve the first amendment to said lease.

Discussion/Action: William J. Garbett spoke against the proposed lease. The first amendment to the lease with Acacia Associates was approved and its execution authorized. Vote: 10-0-1-0. Absent: Fernandes.

**6e(6) Approval of a first amendment to the agreement with Gibson-Speno Richmond Associates and Testamentary Trust created by the Will of Edmund N. Richmond, deceased, to specify the possible uses of the funds raised under the agreement regarding Richmond Ranch. (Public Works)**

Documents Filed: None.

Discussion/Action: This item was deferred to June 20, 1995.

- 6e(7) Approval of a continuation grant agreement with Mount Pleasant School District to extend the term of the original grant agreement from January 1, 1995 to December 31, 1995 at no additional cost to the City. CEQA: Exempt.  
(City Manager's Office)  
[Deferred from 5/30/95 - Item 6e(3)]**

Documents Filed: Memorandum from Assistant to the City Manager, Nina S. Grayson, dated May 12, 1995, recommending Council approve said continuation grant agreement.

Discussion/Action: The continuation grant agreement with Mount Pleasant School District was approved and its execution authorized. Vote: 10-0-1-0. Absent: Fernandes.

- 6e(8) Adoption of a resolution authorizing the City Manager to negotiate and execute a grant agreement with City Year San Jose in the amount of \$100,000.  
(City Manager's Office)  
(Rules Committee referral 5/31/95)**

Documents Filed: Memorandum from Assistant to the City Manager, Nina S. Grayson, dated June 2, 1995, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 65943, entitled: "Resolution of the Council of the City of San Jose Delegating to the City Manager the Authority to Negotiate and Execute a Grant Agreement With City Year San Jose in An Amount Not to Exceed \$100,000", was adopted. Vote: 10-0-1-0. Absent: Fernandes.

## **Routine Legislation**

- 6f(1) Approval of an ordinance amending Section 6.54.140 of Chapter 6.54 of Title 6 of the San José Municipal Code to specify that Peddler ID cards are those issued by the Chief of Police. (City Attorney's Office)**

Documents Filed: Memorandum from City Attorney, Joan R. Gallo, dated May 25, 1995, recommending Council approve the proposed ordinance.

Discussion/Action: Ordinance No. 24917, entitled: "An Ordinance of the City of San Jose Amending Section 6.54.140 of Chapter 6.54 of Title 6 of the San Jose Municipal Code to Specify That Peddler ID Cards Are Those Issued by the Chief of Police", was passed for publication. Vote: 10-0-1-0. Absent: Fernandes.



- 6f(2) Approval of an ordinance amending Sections 6.39.030 and 6.39.040 of Chapter 6.39 of Title 6 of the San José Municipal Code to apply the provisions of the Ice Cream Truck Permit Ordinance to trucks which sell soft-serve or hand-dipped ice cream. (City Attorney's Office)**

Documents Filed: Memorandum from City Attorney, Joan R. Gallo, dated May 25, 1995, recommending Council approve the proposed ordinance.

Discussion/Action: Ordinance No. 24918, entitled: "An Ordinance of the City of San Jose Amending Sections 6.39.030 and 6.39.040 of Chapter 6.39 of Title 6 of the San Jose Municipal Code to Apply the Provisions of Chapter 6.39 to Trucks Which Sell Soft-Serve or Hand-Dipped Ice Cream", was passed for publication. Vote: 10-0-1-0. Absent: Fernandes.

- 6f(3) Approval of an ordinance amending Chapter 6.66 of Title 6 of the San José Municipal Code to add a new Section 6.66.275 to authorize fees for police inspections of private property to determine compliance with the signage requirements for private towing. (City Attorney's Office)**

Documents Filed: Memorandum from City Attorney, Joan R. Gallo, dated May 25, 1995, recommending Council approve the proposed ordinance.

Discussion/Action: William J. Garbett spoke in opposition to the proposed action. Ordinance No. 24919, entitled: "An Ordinance of the City of San Jose Amending Chapter 6.66 of Title 6 of the San Jose Municipal Code to Add a New Section 6.66.275 to Authorize Fees for Police Inspections of Private Property to Determine Compliance With the Signage Requirements for Private Towing", was passed for publication. Vote: 10-0-1-0. Absent: Fernandes.

- 6f(4) Adoption of appropriation ordinance amendments in the Life Insurance Fund in the amount of \$100,000 to provide funding for additional claims payouts in Fiscal Year 1994-95. City Manager's Office)**

Documents Filed: None.

Discussion/Action: This item was deferred to June 13, 1995.

**6f(5) Approval of revisions to the Santa Clara County Cities Association's Agreements and Bylaws. (City Manager's Office)**

Documents Filed: Memorandum from City Manager, Regina V.K. Williams, dated May 22, 1995, recommending Council approve the proposed revisions to the Santa Clara County Cities Association's (SCCCA) Agreement and Bylaws.

Discussion/Action: The revisions to the Santa Clara County Cities Association's Agreements and Bylaws were approved. Vote: 10-0-1-0. Absent: Fernandes.

**6f(6) (a) Adoption of a resolution to accept a donation of \$15,000 from the South Bay Zoological Society to Happy Hollow Park and Zoo for payment of the salary of the Zoo Educator.  
(Convention, Cultural and Visitor Services)**

**(b) Adoption of appropriation ordinance and revenue resolution amendments in the Gift Trust Fund in the amount of \$22,627 to recognize additional revenue for the Cultural Tourism Pilot Project and for a Zoo Educator and to establish a Zoo Educator appropriation.  
(City Manager's Office)**

Documents Filed: (1) Memorandum from Director of Convention, Cultural and Visitor Services, Ellen Oppenheim, dated May 19, 1995, recommending Council adopt said resolution. (2) Memorandum from Budget Director, Larry Lisenbee, dated May 19, 1995, recommending Council adopt said appropriation and revenue resolution amendments in the Gift Trust Fund.

Discussion/Action: Resolution No. 65944, entitled: "A Resolution of the Council of the City of San Jose Accepting a Donation in the Amount of \$15,000 From the South Bay Zoological Society"; Ordinance No. 24920, entitled: "An Ordinance of the Council of the City of San Jose Amending Ordinance No. 24658 Which Appropriates Moneys in the Gift Trust Fund (Fund 139) in the Amount of \$22,627, to Recognize Additional Revenue and Establish a Zoo Educator Appropriation; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption"; and Resolution No. 65945, entitled: "A Resolution of the Council of the City of San Jose Amending Revenue Resolution No. 65348 For the Fiscal Year 1994-95 to Adjust Revenues in the Gift Trust fund", were adopted. Vote: 10-0-1-0. Absent: Fernandes.

**6f(7) Approval of ordinance:**

**(a) Amending Chapter 3.28 of the San José Municipal Code regarding Board of Administration review of proposed amendments to the Federated City Employees Retirement System.**

**6f(7) (Cont'd.)**

- (b) Amending Chapter 3.36 of the San José Municipal Code regarding Board of Administration review of proposed amendments to the Police & Fire Department Retirement Plan.  
(Retirement Boards)**

Documents Filed: Memorandum from Retirement Administrator, Office of Retirement, Edward F. Overton, dated May 19, 1995, recommending Council adopt said ordinances.

Discussion/Action: Ordinance No. 24921, entitled: "An Ordinance of the City of San Jose Amending Chapter 3.28 of Title 3 of the San Jose Municipal Code by Adding Section 3.28.270 Regarding Board of Administration Review of Proposed Amendments to the Federated City Employees Retirement System"; and Ordinance No. 24922, entitled: "An Ordinance of the City of San Jose Amending Chapter 3.36 of Title 3 of the San Jose Municipal Code by Adding Section 3.36.480 Regarding Board of Administration Review of Proposed Amendments to the Police and Fire Department Retirement System", were passed for publication. Vote: 10-0-1-0. Absent: Fernandes.

- 6f(8) Adoption of a resolution authorizing the reorganization of territory designated as Berryessa No. 63, which involves the annexation to the City of San José of 25 acres of land, located at the northwest corner of North Capitol Avenue and Fallingtree Drive, and the detachment of the same from the Central Fire District. CEQA: ND. ((Planning, Building and Code Enforcement))**

Documents Filed: Memorandum from Director of Planning, Gary J. Schoennauer, dated May 19, 1995, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 65946, entitled: "Resolution of the Council of the City of San Jose Ordering the Reorganization of Certain Uninhabited Territory Designated as Berryessa No. 63 Subject to Liability for General Indebtedness of the City", was adopted. Vote: 10-0-1-0. Absent: Fernandes.

- 6f(9) Adoption of a resolution authorizing the grant of an easement to the Santa Clara Water District (SCVWD) over City-owned property at the corner of Snell Avenue and Colleen Drive, and directing the City Clerk to execute the necessary documents. CEQA: Exempt. (Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls Jr., dated May 19, 1995, recommending Council adopt said resolution.

**6f(9) (Cont'd.)**

Discussion/Action: Resolution No. 65947, entitled: "A Resolution of the Council of the City of San Jose Approving the Grant of an Easement to the Santa Clara Valley Water District Over City-Owned Property at the Corner of Snell Avenue and Colleen Drive and Authorizing the City Clerk to Execute the Easement Deed", was adopted. Vote: 10-0-1-0. Absent: Fernandes.

**6f(10) Adoption of a resolution setting forth a new schedule of parking penalties for parking violations, effective July 1, 1995, and superseding Resolution No. 64766. (Streets and Parks)**

Documents Filed: (1) Memorandum from Director of Streets and Parks, Wayne K. Tanda, dated May 19, 1995, recommending Council adopt said resolution.  
(2) Memorandum from Parking Advisory Commission Chair, Abi Maghamfar, dated May 9, 1995, proposing amendments to the FY 1995-96 City Budget.

Discussion/Action: B. Dennis Hickey, Vice Chair Parking Advisory Commission, addressed Council on the increase in the parking violation penalties and opposed the transfer of \$272,000 to the General Fund for parking enforcement. He stated the Program is less well positioned to share future parking infrastructure development, as the Parking Fund must demonstrate positive cash flow to be bondable, and that the current projections are insufficient reserves for the current year. In view of the context change of the transfer of funds, he requested Council endorsement of the budget amendments as proposed. City Manager Williams advised Council that the budget recommendations will be addressed during ongoing budget deliberation. Resolution No. 65948, entitled: "A Resolution of the Council of the City of San Jose Setting Forth the Schedule of Parking Penalties and Late Payment Penalties for Parking Violations, and Repealing Resolution No. 64766, Effective July 1, 1995", was adopted and the recommendations contained in the Parking Advisory Commission memorandum dated May 9, 1995 referred to the budget review process. Vote: 10-0-1-0. Absent: Fernandes.

**6f(11) Adoption of a resolution accepting an access easement from the Roman Catholic Bishop of San José and granting an access easement and a storm drain easement over City-owned property to the Roman Catholic Bishop of San José and directing the Director of Public Works, or designee, to execute the necessary documents. CEQA: ND. (Public Works)  
[Deferred from 5/30/95 - Item 6f(7)]**

Documents Filed: None.

Discussion/Action: This item was deferred to June 13, 1995.

- 6f(12) Approval of the Arts Commission recommendation to adopt a resolution strongly urging the President and Congress to reauthorize the National Endowment for the Arts for five (5) years and to continue the appropriation for the Endowment at or above its current level. (Arts Commission)  
(Rules Committee referral 5/31/95)**

Documents Filed: Memorandum from Director of Convention, Cultural and Visitor Services, Ellen Oppenheim, dated May 26, 1995, recommending Council adopt said Arts Commission recommendation.

Discussion/Action: Resolution No. 65949, entitled: "A Resolution of the Council of the City of San Jose in Support of the National Endowment For the Arts", was adopted. Vote: 10-0-1-0. Absent: Fernandes.

- 6f(13) Adoption of a resolution amending the Administrative Citation Schedule of Fines for certain violations of the San Jose Municipal Code and superseding Resolution No. 65689. (City Attorney's Office)  
[Deferred from 5/30/95 - Item 6f(1)]**

Documents Filed: Memorandum from City Attorney, Joan R. Gallo, dated June 5, 1995, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 65950, entitled: "Resolution of the Council of the City of San Jose Amending the Administrative Citation Schedule of Fines for Certain Violations of the San Jose Municipal Code, and Superseding Resolution No. 65689", was adopted. Vote: 10-0-1-0. Absent: Fernandes.

## **END OF CONSENT CALENDAR**

## **COMMISSION, COMMITTEE, AND STANDING REPORTS**

### **7b Report of the Rules Committee - May 24, 1995**

Documents Filed: Rules Committee report of May 24, 1995.

- (1) Review of June 6 Council Agenda

The Committee recommended approval of the June 6, 1995 Council Agenda with one addition and one change.

**7b Report of the Rules Committee - May 24, 1995 - (Cont'd.)**

- (2) Add New Items to May 30 Amended Council Agenda

The Committee recommended one addition and one change to the May 30, 1995 Council Agenda.

- (3) The Public Record. Attachment: Memorandum from City Clerk, Patricia L. O'Hearn, dated May 18, 1995, listing those items transmitted to the Administration.

The Committee recommended approval of the Public Record.

- (4) Approve Legislative Report 95-04

AB 318 (Katz)Cities: Water and Power: Rates  
AB 403 (Richter)Petroleum Underground Storage Tanks  
AB 1340 (Sweeney)Santa Clara County Joint Special Area Plans  
AB 1424 (Isenberg)Redevelopment Agencies: Payments  
AB 1488 (Caldera)EMS: Immunity from Liability  
AB 1947 (Battin)Hazardous Materials: Local Regulations  
SB 372 (Wright)Medical Waste: Treatment  
SB 602 (Wright)Local Use Tax: Leased Vehicles  
SB 926 (Calderon)Writings: Electronic Media  
SB 1059 (Peace)Public Records: Disclosure of Information

This item was heard by Council on May 30, 1995.

- (5) Report on Big Box Retail

The Committee recommended continued discussion of this item at the May 31, 1995 Rules Committee meeting.

- (6) Council Referrals for Assignment to Appropriate Committee, Administration, or Council Appointee

None presented.

- (7) City Council and Rules Committee meeting schedules

None presented.

- (8) Oral communications

None presented.

**7b Report of the Rules Committee - May 24, 1995 - (Cont'd.)**

(9) Adjournment

The meeting adjourned at 2:55 p.m.

Upon motion by Vice Mayor Johnson, seconded by Council Member Powers and unanimously carried, Rules Committee report and actions of May 24, 1995 were accepted. Vote: 10-0-1-0. Absent: Fernandes.

**7d Report of the Finance Committee - May 24, 1995**

Documents Filed: Finance Committee report of May 24, 1995.

(1) Oral petitions

William Chew petitioned the Committee to schedule its meetings for the afternoon.

(2) Report on Back Billing of Recycle Plus Customers. Attachment: Memorandum from Director of Finance, John V. Guthrie, dated May 15, 1995, recommending the Finance Committee (a) recommend Council approval of a new collection policy which allows the Director of Finance to offer extended payment schedules to Recycle Plus customers who are billed retroactively, and (b) to accept this report as response to Council Referral 2-21-95-7b(5), regarding backbilling of Recycle Plus accounts and as response to an oral petition submitted by the Committee regarding backbilling and lien procedures.

The Committee recommended approval of Option B to provide an extended payment plan to mitigate the impact of back-billing Recycle Plus customers, and Staff directed to prepare for the August 23 Committee meeting a status report on back-billing and to include the history of the billing process.

(3) Monthly Auditor's Report for April 1995. Attachment: Report of the Office of the City Auditor's activities for the month of April 1995.

The Committee accepted the report.

**7d Report of the Finance Committee - May 24, 1995 - (Cont'd.)**

**(4) Committee schedule**

The Committee directed that the TOT auditing procedures be included in the Auditor's Workplan when it is presented at the June 14 meeting, and that Chair Woody work with the Director of Finance to schedule the Auditor's Office process for audits in the 1995-96 Committee Workplan which will be presented at the June 28, 1995 Committee meeting.

**(5) Adjournment**

The meeting adjourned at 10:43 a.m.

Upon motion by Council Member Woody, seconded by Council Member Diaz and unanimously carried, the Finance Committee report and actions of May 24, 1995 were accepted. Vote: 10-0-1-0. Absent: Fernandes.

**GENERAL GOVERNMENT**

**9a Adoption of appropriation ordinance and revenue resolution amendments to transfer \$57,815,478 in both, revenues and expenditures, from the General Fund to the newly established Integrated Waste Management Fund.  
(City Manager's Office)  
(Deferred from 4/25/95 et al., and 5/23/95 - Item 9a)**

Documents Filed: Memorandum from Budget Director, Larry D. Lisenbee, dated May 31, 1995, recommending Council approve said appropriation ordinance and revenue resolution amendments in the General Fund and the Integrated Waste Management Fund.

Discussion/Action: William J. Garbett spoke against the proposed action. Upon motion by Vice Mayor Johnson, seconded by Council Member Diaz and unanimously carried, Ordinance No. 24923, entitled: "An Ordinance of the Council of the City of San Jose Amending Ordinance No. 24658 Which Appropriates Moneys in the General Fund in the Amount of \$57,815,478, to Establish the Integrated Waste Management Fund; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption"; and Resolution No. 65951, entitled: "A Resolution of the Council of the City of San Jose Amending Revenue Resolution No. 65348 for the Fiscal Year 1994-95 to Adjust Revenues in the General Fund", were adopted. Vote: 10-0-1-0. Absent: Fernandes.



- 9b
- (1) **Approval of a consultant agreement with Environmental Science Associates, Inc. (ESA), for the preparation of a joint Environmental Impact Report (EIR) and Environmental Impact Statement (EIS) for the San José International Airport Master Plan Update Project, in an amount not to exceed \$960,000. (Airport)**
  - (2) **Adoption of appropriation ordinance and revenue resolution amendments in various Airport funds to provide an additional \$700,000 for the Advanced Planning Project. (City Manager's Office)**

Documents Filed: (1) Memorandum from Director of Aviation, Ralph G. Tonseth, dated May 19, 1995, recommending Council approve said consultant agreement with Environmental Science Associates, Inc. (2) Memorandum from Budget Director, Larry D. Lisenbee, dated May 23, 1995, recommending Council approve said appropriation ordinance and revenue resolution amendments in the Airport Revenue Fund and the Airport Surplus Revenue Fund.

Discussion/Action: The following citizens addressed Council in opposition to the proposed action: Mark Allen, Regional Representative for the Aircraft Owners & Pilots Association; Susan Larson, Vice President, CRAMP; and William J. Garbett. Upon motion by Council Member Powers, seconded by Vice Mayor Johnson and unanimously carried, Ordinance No. 24924, entitled: "An Ordinance of the Council of the City of San Jose Amending Ordinance No. 24658 Which Appropriates Moneys in the Various Airport Funds in the Amount of \$700,000 to Provide Additional Funding for the Advanced Planning Project; And Providing That This Ordinance Shall Become Effective Immediately Upon Adoption"; and Resolution No. 65952, entitled: "A Resolution of the Council of the City of San Jose Amending Revenue Resolution No. 65348 for the Fiscal Year 1994-95 to Adjust Revenues in Various Airport Funds", were adopted. Vote: 10-0-1-0. Absent: Fernandes.

Council Member Diquisto left Council Chambers at this point in the meeting.

- 9d **Adoption of a resolution authorizing the Director of General Services to:**
- (1) **Execute a three (3) year agreement with J. E. Butts and Associates for Transit Mall and Central Business District street sanitation services for a first year cost of \$544,332.**
  - (2) **Exercise two (2) one (1) year options for renewal based on the Consumer Price Index (CPI), not to exceed seven (7) percent per year beginning on the first anniversary with a cap of twenty-eight (28) percent over the term of the agreement, including option years and contingent upon Council approval of funds each year. (General Services)**

Documents Filed: None.

Discussion/Action: This item was deferred to June 13, 1995.

- 9f      Report on bids and award of contract for the Julian-Sunol Sanitary Sewer Supplement Rehabilitation Phase I Project to the low bidder, Stacy and Witbeck, Inc., in the amount of \$1,294,389 and approval of a contingency in the amount of \$130,000. CEQA: Exempt. (Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls Jr., dated May 19, 1995, reporting on the bids and recommending Council award said contract to low bidder Stacy and Witbeck, Inc.

Discussion/Action: Upon motion by Vice Mayor Johnson, seconded by Council Member Fiscalini and unanimously approved, the award of contract to Stacy and Witbeck was approved and its execution authorized. Vote: 9-0-2-0. Absent: Diquisto, Fernandes.

- 9g      Report on bids and award of contract for the Arbuckle Elementary School Improvements Project to the low bidder, John Clay General Engineering Contractor, to include the base bid and Add Alternate Nos. 1, 2 and 3, in the amount of \$297,998. CEQA: Exempt. (Public Works)**

Documents Filed: (1) Supplemental memorandum from Director of Public Works, Ralph A. Qualls Jr., dated June 1, 1995, providing additional information obtained after the bid opening and recommending Council award said contract to low bidder John Clay General Engineering Contractor. (2) Memorandum from Director of Public Works, Ralph A. Qualls Jr., dated May 19, 1995, reporting on the bids and award of contract for said project.

Discussion/Action: Upon motion by Council Member Diaz, seconded by Vice Mayor Johnson and unanimously carried, the award of contract to John Clay General Engineering Contractor was approved and its execution authorized. Vote: 9-0-2-0. Absent: Diquisto, Fernandes.

- 9h      (1)      Report on bids and award of contract for the Center for the Performing Arts (CPA) Theatrical Lighting Project to the low bidder and approval of a contingency of ten (10) percent. (Public Works)**  
**(2)      Adoption of appropriation ordinance and revenue resolution amendments in the General Fund for the Center for Performing Arts Lighting Project. (City Manager's Office)**

Documents Filed: None.

Discussion/Action: This item was deferred to June 13, 1995.

- 9i      **Adoption of a resolution:**
- (1)      **Authorizing the Director of General Services to execute a Master Service Agreement with Rocky Mountain BankCard system for a Citywide credit card program for small dollar purchases.**
  - (2)      **Authorizing the Director of General Services to exercise two (2) one-year options to renew, contingent upon Council approval of the funds each year.**
- (General Services)**  
**(Deferred from 5/30/95 - Item 9c)**

Documents Filed: Memorandum from Acting Director of General Services, Ellis M. Jones, Jr., dated May 22, 1995, recommending Council adopt said resolution.

Discussion/Action: Upon motion by Council Member Woody, seconded by Council Member Diaz and unanimously carried, Resolution No. 65953, entitled: "A Resolution of the Council of the City of San Jose Authorizing the Director of General Services to Execute an Agreement With Rocky Mountain Bankcard System for a Citywide Credit Card Program and Authorizing the Exercise of Two One Year Options to Renew the Agreement", was adopted. Vote: 9-0-2-0. Absent: Diquisto, Fernandes.

- 9l      **Approval of the renaming of the Department of Convention, Cultural and Visitor Services to the Department of Conventions, Arts and Entertainment.**  
**(Referred from 5/30/95 - Item 9g)**

Documents Filed: Memorandum from City Manager, Regina V.K. Williams, dated June 5, 1995, recommending Council approve said name change.

Discussion/Action: Upon motion by Council Member Pandori, seconded by Council Member Shirakawa and unanimously carried, the renaming of the Department was approved. Vote: 9-0-2-0. Absent: Diquisto, Fernandes.

Council Member Diquisto returned to the Council Chambers at this time in the meeting.

- 9j      **Adoption of a resolution authorizing the City Manager to negotiate and execute an agreement between the City and County of Santa Clara under which the City will implement ALS First Responder Services through the Fire Department. (City Manager's Office)**  
**(Deferred from 5/23/95 and 5/30/95 - Item 9h)**

Documents Filed: (1) Memorandum from Senior Deputy City Manager Darrell Dearborn, and Fire Chief Raymond Brooks, dated June 3, 1995, recommending Council adopt said resolution. (2) Memorandum from City Attorney, Joan R. Gallo, dated

June 6, 1995, advising Council of the unusual provision which the County has insisted on including in the paramedic agreement.

Discussion/Action: Senior Deputy City Manager, Darrell A. Dearborn, informed Council that representatives of the County and the City have completed discussions on the terms of the Option D Agreement and have produced a draft which is acceptable to all parties. He pointed out that the agreement would permit the City Council to achieve two of the four objectives it originally established for an alternative to the current EMS System in San Jose; and if approved, the agreement would result in substantial improvement in EMS services to the citizens of San Jose, funded largely from operational cost savings in the current system that would have little or no impact on the quality of essential medical services provided now. In reviewing the termination provisions of the agreement, he pointed out that should the County terminate the agreement due to breach of contract by the City, the City is precluded from assisting other Santa Clara County cities in "201" rights suits or from implementing ALS transport programs without County approval. He stated the City may terminate the agreement if the County defaults on its obligation, fails to provide ambulance service or base hospital support; however, the agreement terminates upon early termination of County contractor agreement, unless Santa Clara County can secure an alternative funding source. He concluded with the total 1995-96 obligation of Option D Agreement Program costs and additional costs not recognized in the Agreement--\$1,589,601, the addition of the appropriation to the Fire Department, with the net impact on the General Fund in 1995-96 anticipated at \$516,173. He responded to Council concerns regarding increase in start-up costs to the City, the increase in program costs versus the increase in payments and additional cost adjustments, County revenue generated by the program, maintenance of equipment, the establishment of a cost center for accounting purposes, and the existence of mandatory reporting mechanisms which he stated has been developed to include scheduled public hearings. Council Member Diquisto expressed opposition to the Option D Agreement and support for the Option B Agreement. Ken Heredia, representing Local 230, conveyed the organization's opposition to all the proposals; Regina Mayor spoke in favor of Option D; and Anne Moses, Santa Clara County, was available to respond to Council's questions. In response to Council's inquiry relative to the Fire Department's preference, Fire Chief Raymond Brooks recommended approval of Option B, which would achieve the four objectives previously established for changes in the current system. The motion by Council Member Diquisto, seconded by Council Member Powers to approve the Option B Agreement, failed. Vote: 3-7-1-0. Noes: Dando, Diaz, Fiscalini, Johnson, Pandori, Shirakawa, Jr.; Hammer. Absent: Fernandes. Mayor Hammer summarized her support for Option D with thanks to Fire Chief Brooks and Battalion Fire Chief Clet, Senior Deputy City Manager Dearborn, the Mayor's Budget and Public Policy Director

Bob Brownstein, and City staffs, and to Santa Clara County representatives for their coordinated efforts in the development of the paramedic agreement. Council Member Pandori noted his reluctance to support Option D given the contents of the June 6, 1995 memorandum from the City Attorney regarding the inclusion of a provision in the paramedic agreement to limit participation by the City and City staff in litigation concerning the rights of cities to institute paramedic programs, including ambulance programs. He stated one scenario of this unusual provision which produces troubling effects is that any jurisdiction may legally contest with the County the operating of an ambulance service and therefore are exempt from the provision; thereby the City of San Jose declines to assert its rights to the extent possible and loses the use of an efficient and timely manner to address the issue. He stated the second scenario is more troubling than the first, in that, if the issue is litigated and progresses to an appellate court which may rule against the City, the effect of that ruling will be an indefinite ruling of long-term effect against the City of San Jose--even if the paramedic agreement is for a five-year period. He stated the City is essentially gagged or handcuffed to deal with the long-term effect of not asserting its own rights. He suggested that the City Council either authorize the City Manager to include in the negotiations of the agreement the concerns expressed by Council, or postpone final approval of the agreement pending receipt of additional information from the County on the entire issue. Noting her concern about the issue, Mayor Hammer suggested that the language be removed from the agreement and placed with other concerns in the dispute resolution process, thereby allowing Council to approve the agreement. City Attorney Gallo assured Council that should the matter culminate in litigation, the concept of preventing the City of San Jose from assisting other cities in instituting paramedic programs will be discussed between the City Manager and the County Executive, and the City Attorney and the County Counsel and that a solution will be sought that is mutually beneficial to all parties, with a report back to the City Council. Council Member Woody stated the Option D Program provides only two of the four objectives requested by the City Council; that the option is neither cost recovery for the City nor provides the best cost reductions for the citizenry; and that she is opposed to the City agreeing to relinquish certain of its rights in concert with other jurisdictions in deference to the County. Upon motion by Council Member Fiscalini, seconded by Council Member Diaz and carried, Resolution No. 65954, entitled: "Resolution of the Council of the City of San Jose Authorizing the City Manager to Negotiate And Execute An Agreement Between the City and the County of Santa Clara Under Which the City Will Implement Advanced Life Support First Responder Services Through the Fire Department", was adopted. Vote: 7-3-1-0. Noes: Diquisto, Powers, Woody. Absent: Fernandes.

**9k      Report and recommendations on disposition of River Street Historic Structures.  
(Public Works)  
(Continued from 5/16/95 and 5/23/95 - Item 9l)**

Documents Filed: None.

Discussion/Action: This item was deferred to June 13, 1995.

**RECESS/RECONVENE**

Council recessed at 4:00 p.m. and reconvened at 7:08 p.m. in Council Chambers, City Hall.

Present: Council Members - Dando, Diaz, Diquisto, Fernandes, Fiscalini, Johnson, Pandori, Powers, Shirakawa, Jr., Woody; Hammer.

Absent: Council Members - None.

City Clerk, Patricia L. O'Hearn, read the requests for continuances of applications and other actions as recommended. Upon motion by Council Member, seconded by Council Member and unanimously carried, the below noted continuances and other actions were granted. Vote: 11-0-0-0.

**PUBLIC HEARINGS**

**15f      PUBLIC HEARING ON CONVENTIONAL CONFORMING REZONING of the  
property located on the southeast corner of San Felipe Road and Silver Estates  
Drive, from A-Agricultural Zoning District to R-1:B-8 Residence Zoning District,  
to allow single-family detached residential uses on a 4.88 gross acre site (STOA  
International, Owner/Developer).  
C 95-03-014 - District 8**

Documents Filed: Notice of public hearing to consider a change in Zoning C 95-03-014, dated April 14, 1995, and proof of publication submitted by the City Clerk.

Discussion/Action: This item was withdrawn by the Applicant and dropped from the Agenda.

- 15h PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the north side of Murphy Avenue, 400 feet west of Lundy Avenue, from A(PD) Planned Development to A(PD) Planned Development, to allow up to 84 single-family attached residential units on 3.2 gross acres (Pacific Rim Garden Villa, Inc., Owner/Developer). CEQA: ND. PDC 95-04-023 - District 4**

Documents Filed: None.

Discussion/Action: This item was continued to June 20, 1995.

- 15a Final PUBLIC HEARING and adoption of a resolution confirming the report of the Director of Streets and Parks on the cost of sidewalk repairs, confirming the assessments contained in the report and directing the recording of liens (SW 6-95). CEQA: Exempt. (Streets and Parks)**

Documents Filed: See Item 10a of the Minutes of the May 30, 1995 City Council meeting.

Discussion/Action: Mayor Hammer opened the final public hearing on the subject report. Director of Streets and Parks, Wayne K. Tanda advised Council that since the May 30, 1995 public hearing four property owners had contacted the Department regarding specific properties proposed for assessment of sidewalk repair costs. He stated three of the homeowners have entered into payment agreements with the Finance Department and their names have been removed from the recording of liens against their properties. He stated the fourth citizen requested the Department deduct from the assessment a certain amount for the work which the property owner completed and to extend residual payments over a two-year period. Property owners Anthony Moss and James A. Hack requested special handling of their assessments. Upon motion by Council Member Fiscalini, seconded by Vice Mayor Johnson and unanimously carried, the final public hearing was closed, Staff recommendation to remove from the lien process the following assessments: PN/Invoice #56747001/9300013764 for 1270 Ashcroft Lane, K. S. Harrison; PN/Invoice #48407024/9300013693 for 2392 Mammoth Drive, Composagrado, et al.; PN/Invoice #46411016/9300016033 for 334 Avenida Nogales, H.G. and O.A. Machado; PN/Invoice #67306079/ 9300013971 for 2776 Gavilan Dr., D.D and M Chavez; PN/Invoice #46225040/9300015055 for 4284 Windsor Park Dr., J.A. and S.J. Hack; and PN/Invoice #64913036/9300014562 for 3313 Tully Road, A.W. and G. Moss, was approved; and Resolution No. 65955, entitled: "Resolution of the Council of the City of San Jose Accepting the Report of the Director of Streets and Parks on Sidewalk Repairs, Confirming as Amended the Assessments Contained in the Report, Directing the Recording of Liens and Setting the Lien Interest Rate", was adopted. Vote: 11-0-0-0.

**15b Final PUBLIC HEARING and adoption of a resolution approving, confirming, and adopting the Assessment Report and setting the amount of assessment for the Library Benefit Assessment District. (Library)**

Documents Filed: (1) Memorandum from City Librarian, James H. Fish. dated May 30, 1995, recommending Council adopt said resolution, assuming that the percentage of protests by parcel owners is less than the required fifty percent. (2) Affirmation of the assessment consultants' calculation of protests received compared to the number of assessments mailed and the percentage required to abandon the assessment.

Discussion/Action: Mayor Hammer opened the final public hearing on the subject district. Approximately thirty citizens addressed Council on various aspects of the Assessment Report and the Assessment District, including the following who spoke in opposition to the proposal: Thelma Watkins, Charlie Slaten, Brad McMullin, Gary Robertson, Marcia Harris, Silverio E. Ignacio, Tony McDonald, Albert Drost, Peter Rondiak, Alice Nesstiro, John Messina, Hazel Chirco, Ruth Katan, Hal Janzen, Pat Shrum, Kaye Roozen, James Sweet, Ben Youngberg, Andrea B. Soto, Sarban Sergill, Willora Day, Edward Mason; and Kathleen O'Connell-Sundaram, representing Santa Clara Taxpayers Association. Ross Signorino addressed Council in support of libraries. In response to the comments by property owner Sandra L. Holmes regarding the City's guarantee that the total amount of the assessment will be used only for library improvements and that the assessment will remain constant for the 10-year period, City Attorney Joan R. Gallo stated for the record that the legal requirements and the City Ordinance mandate the appropriation of revenues from the Library Benefit Assessment District exclusively to the most basic of public needs for library service with accounting records available to the public, and that the assessed amount for each parcel cannot be increased. For further clarification, she explained the protest process which has been coordinated by assessment consultants Berryman and Henigar and that the results will be reported at the end of this evening's public hearing. For the public record, Mayor Hammer refuted the speaker's statement that the Library Benefit Assessment District is a Mello-Roos creation. City Clerk Patricia L. O'Hearn read into the public record the following statement: "Madam Mayor and City Council Members: Notice of the proposed assessment was mailed to the 203,020 parcels proposed to be assessed. As of the start of the public hearing this evening, a total of 5,685 letters were received from persons protesting the proposed assessment. After review of those letters, a total of 6,218 parcels protested the assessment, representing \$208,759 of the total amount proposed to be assessed. This represents a protest percentage of 3.7 percent which is less than a majority protest". Upon motion by Council Member Powers, seconded by Vice Mayor Johnson and unanimously carried, the public hearing was closed, the Assessment Auditor's report accepted, and Resolution No. 65956, entitled: "A Resolution of the Council of the City of San Jose Approving, Confirming and Adopting the Assessment Report for the City of San Jose Library Benefit Assessment District", was adopted. Vote: 11-0-0-0.



**15c First PUBLIC HEARING on the Engineer's Reports for Maintenance Districts 1, 2, 4 through 6, and 8 through 15. (Public Works)**

Documents Filed: See Item 10b of the June 13, 1995 City Council meeting.

Discussion/Action: Mayor Hammer opened the first of two public hearings on the Engineer's Reports for the subject Maintenance Districts. There was no discussion from the Floor; however, City Staff was directed to meet with Council Member Powers and respond to questions regarding the care and quality of maintenance to be provided for District 2 constituents. By unanimous consent, the first public hearing was closed with no further action required, and the second public hearing scheduled for June 13, 1995. Vote: 11-0-0-0.

**15d PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the south side of Blossom Hill Road, 220 feet westerly of Hillview Avenue, to allow the demolition of an existing restaurant and the construction of a new restaurant, including a drive-through window on 0.80 gross acre (Hillview Associates/Sydran Food Services, Owner; Burger King Restaurants, Developer). CEQA: ND. Director of Planning recommends approval. Planning Commission recommends approval (6-0-1).**

**PDC 94-11-050 - District 10**

**(Continued from 4/4/95 and 5/2/95 - Item 15e)**

Documents Filed: (1) Memorandum from the Planning Commission, dated May 19, 1995, recommending Council adopt an ordinance approving the subject rezoning. (2) Notice of public hearing to consider a change in Zoning PDC 94-11-050, dated February 3, 1995, and proof of publication submitted by the City Clerk.

Discussion/Action: Mayor Hammer opened the public hearing on the planned development rezoning of the subject property. There was no discussion from the Floor. Upon motion by Council Member Dando, seconded by Council Member Fiscalini and unanimously carried, the public hearing was closed, the Planning Commission recommendation approved, and Ordinance No. 24925, entitled: "Ordinance of the City of San Jose Rezoning Certain Real Property Situated on the South Side of Blossom Hill Road, Approximately 220 Feet Westerly of Hillview Avenue", was passed for publication. Vote: 11-0-0-0.

- 15g PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located at the north side of Phelan Avenue, 300 feet westerly of McLaughlin Avenue, from R-1 to A(PD), to allow up to 15 single-family detached residential units on 1.63 gross acres (Pentecostal Church of God of America, Owner; W.C.L. Development, Developer). CEQA: ND. Director of Planning recommends approval. Planning Commission recommends approval (6-0-1). PDC 95-02-007 - District 7**

Documents Filed: (1) Memorandum from the Planning Commission, dated May 19, 1995, recommending Council adopt an ordinance approving the subject rezoning. (2) Notice of public hearing to consider a change in Zoning PDC 95-02-007, dated April 19, 1995, and proof of publication submitted by the City Clerk.

Discussion/Action: Mayor Hammer opened the public hearing on the planned development rezoning of the subject property. There was no discussion from the Floor. Upon motion by Council Member Shirakawa, Jr., seconded by Vice Mayor Johnson and unanimously carried, the public hearing was closed, the Planning Commission recommendation approved, and Ordinance No. 24926, entitled: "Ordinance of the City of San Jose Rezoning Certain Real Property Situated at the North Side of Phelan Avenue, 300 Feet Westerly of McLaughlin Avenue", was passed for publication. Vote: 11-0-0-0.

- 9c Presentation of City of San Jose's Emergency Planning and Preparedness Program and follow-up on January and March 1995 storms. (City Manager's Office)**

Documents Filed: None.

Discussion/Action: Council Member Pandori stated the participants involved in the Program presentation were unable to attend the Council meeting and have requested a deferral of this matter to a later date. By unanimous consent, this item was deferred to August 1995 with appropriate noticing to be sent to all parties. Vote: 11-0-0-0.

- 9e Discussion and approval of the evaluation report of the Citizen's Advisory Committee on the Office of the Independent Police Auditor. (Mayor) (Deferred from 4/18/95 and 5/16/95 - Item 9b)**

Documents Filed: (1) Memorandum from City Manager, Regina V.K. Williams, dated June 6, 1995, recommending referral to the Administration for resolution in conjunction with the Independent Police Auditor and the Police Department the concerns expressed by the Police Department regarding the ability of a qualified member of the Auditor's

staff, other than the Auditor, to attend Professional Standards and Conduct Unit interviews of any witness or police officer when the Auditor is unable to attend.

(2) Document entitled *Report of the Citizens' Advisory Group on the Independent Police Auditor*, dated May 1995.

Discussion/Action: Mayor Hammer stated the establishment of the Independent Police Auditor position was approved by the City Council in November of 1992 as an alternative to a police review board and as the vehicle that should be used by the City to review the Police Department's citizens complaint process. She stated the Council also approved the creation of a Citizens' Advisory Group (CAG) to assemble a job description for the Auditor and to suggest qualifications and selection criteria for the position. She stated the Group was reconvened in February 1995 with the charge to evaluate the effectiveness of the position and to determine if any recommendations with regard to whether any more resources or other organizational changes are needed to augment the position; in addition the charge included direction to the Group to conduct its evaluation in the context of the Independent Police Auditor position and not to examine alternatives to that position. She stated the recommendations in the Report should be accepted without Council action taken on specific issues; therefore, the increase in the Auditor's staff should be referred to the Office of the Mayor and the City Manager to identify funding sources to provide for the increase. She stated the recommendation to fund the consultant services will be addressed by the City Manager and the Department in conjunction with the Police Department's concerns pertaining to the ability of a qualified member of the Auditor's staff, other than the Auditor, to attend Professional Standards and Conduct Unit interviews of any witness or police officer when the Auditor is unable to attend. She reaffirmed the commitment of the City Council to continue monitoring the activities of the Independent Police Auditor's Office and will initiate changes as appropriate. The City Council joined Mayor Hammer in commending the six members of the original nine-member advisory group--Anne Dandavati, Ed Davila, Nate Newman, Lil Silberstein, Wiggys Siversten, and Group Chair Jorge Gonzalez--for a job well done. As a point of clarification, City Manager, Regina V.K. Williams, stated the City Attorney needs to be involved in the implementation process of the recommendations contained in the CAG's Report. Jorge Gonzalez, Chair of the Citizens' Advisory Group, presented to the City Council the report and recommendations on the Office of the Independent Police Auditor. In response to Council Member Pandori's concern regarding the Police Department's use of the written "Consent to Search" form and its effectiveness in the performance of the duties of Police Officers, City Attorney Gallo stated several meetings have taken place between the District Attorney's Office, the Police Department, and the City Attorney's Office in an effort to address the legal issues and that a report and recommendations will be available to Council within 60 days. The following citizens addressed Council on various aspects of the Report: Patrick E. Adair, Santa Clara

**9e (Cont'd.)**

County Bar Association; John Cox, ACLU Santa Clara County; Martha O'Connell, Shadow Committee; Rachel Perez, Shadow Committee; Golden Wolf, Voice of the Homeless; Maria Ortiz, Save Our Sons; and Sandy Perry, John Messina, Jim Vivian, Eric Petersen, Susan Worth, John Gerken, and Miguel Angel Diaz. Upon motion by Council Member Fiscalini, seconded by Council Member Pandori and unanimously carried, the report was accepted and the recommendations in the evaluation report referred to the City Manager and the City Attorney for a report back to Council; and the funding issues referred to the budget process. Vote: 11-0-0-0.

Council Member Woody left the meeting during discussion of Item 15e.

- 15e PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the northwest corner of Almaden Expressway and Blossom Hill Road, from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District, to allow revisions to the approved Planned Development Zoning for construction of a 133,318 square-foot Price Club retail store on 38 gross acres (Brothers International, Owner/Developer). CEQA: ND. Director of Planning recommends approval. Planning Commission recommends denial (3-4-0).**

**PDCSH 95-03-013 - District 9**

**(Continued from 5/2/95 - Item 15h)**

Documents Filed: (1) Memorandum from the Planning Commission, dated April 14, 1995, denying the subject rezoning. (2) Notice of public hearing to consider a change in Zoning PDC 95-03-013, dated March 21, 1995, and proof of publication submitted by the City Clerk. (3) Letter from Steven J. Tedesco, President and CEO, San Jose Metropolitan Chamber of Commerce, dated June 5, 1995, requesting Council approval of the proposed Price/Costco store at Almaden Fashion Plaza. (4) Letter from the Clover Crest/Russo Neighborhood Association, dated May 24, 1995, submitting a document entitled *Petition to Stop the Expansion of Price/Costco at Almaden Plaza* and *Petition to Request a Rehearing on the 1993 Approved Permit for Price/Costco at Almaden Plaza*, bearing the signatures of 131 concerned citizens residing in the Almaden Expressway/Blossom Hill Road neighborhood.

Discussion/Action: Mayor Hammer opened the public hearing on the planned development rezoning of the subject property. With the use of transparencies of the project, Jack Frank, representing Price Club, and Dave Readler of Kier & Wright, Civil Engineers & Surveyors, Inc., presented a comprehensive overview of the proposed project and the benefits for the physical and economic improvements. The following

15e (Cont'd.)

citizens spoke in opposition to the proposed development: Patrick Casey; Jim Clark; Clovercrest Russo Neighborhood Association; Mark Kaplan; and Andrew Russell Siu Li and John Dattilo spoke in support of the proposed development. Mark Seeley spoke against the closing of LaVonna Drive and Dawn Mazur, representing the Real Estate Industry, addressed Council on the broker association with Century 21. Nancy Amazen, representing Clovercrest Russo Neighborhood Association, submitted for the public record a petition bearing approximately 131 signatures of property owners against the expansion. In rebuttal, Jack Frank discussed concerns expressed by the speakers regarding the hours of operations and receiving, truck deliveries and traffic capacity in the Almaden Expressway neighborhood, parking shortfall, trash compactor, carts strewn throughout neighborhoods adjacent to the development and the proposal for the retrieval of those carts. In response to Council requests, City Attorney Gallo stated the approval process for the subject rezoning occurs in two phases--the Planned Development Zoning and the Planned Development Permit stage--and that at the second reading of the Ordinance, as a condition of approval, the developer can be directed to modify the plans to accommodate negotiated changes. Council Member Pandori stated the noise level is unacceptable and for that reason he would not support the project. Upon motion by Council Member Diquisto, seconded by Council Member Diaz and carried, the public hearing was closed, the Planning Commission recommendation to deny the proposed rezoning, was denied, and Ordinance No. 24927, entitled: "Ordinance of the City of San Jose Rezoning Certain Real Property Situated at the Northwest Corner of Almaden Expressway and Blossom Hill Road", was passed for publication. Vote: 9-1-1-0. Noes: Pandori. Absent: Woody.

## ADJOURNMENT

The Council of the City of San Jose adjourned at 10:20 p.m. in memory of John R. Bernal, prominent attorney and member of one of Santa Clara County's oldest families.

SUSAN HAMMER, MAYOR

ATTEST:

PATRICIA L. O'HEARN, CITY CLERK  
RT

precluding the City from asserting its rights in concert with other jurisdictions

so that before a decision is made that either side feels is not in the other side's best interest, we would hear it out completely; and Council will make the decision.

arrive at a solution that is mutually beneficial to all parties and reflect the concerns in the final language

Council Member Pandori stated Staff would negotiate the issue with the County and prior to executing the agreement,

City identified two scenarios involving legal implications of the effect of the provision on the City's ability to assert its right to litigate during the five-year term of the agreement, and suggested that Council postpone final approval of the agreement pending receipt of additional information from the County on the entire issue.

during the term of the agreement; noting that the County and City will meet and confer prior to initiating litigation.

City identified two scenarios involving legal implications of the effect of the provision on the City's ability to assert its right to litigate during the five-year term of the agreement, and suggested that Council postpone final approval of the agreement pending receipt of additional information from the County on the entire issue.

Option D looked good and that said that this would be cost recovery. As we come back today and what is being put before us Option D accomplishes two things but it is not cost recovery and doesn't reduce the cost for the citizenry. She stated that what has happened is a contract that over the course of the talk that an RFP would be extend the contract with AMR and allows them a 4% rate increase. I really I understand that when people talk about Option B I can understand that risk; but at the same time the Administration took into consideration and that each of the scenarios produced revenues to put back in the General Fund. The Option D Program is not cost recovery nor does it give the best cost to the city citizens. She stated the City is giving up its rights and that we the City would then be working under the County contract. I do have my concerns with Option D. I cannot in all good conscience vote for Option D.

He stated the unresolved legal issues will minimize the City's ability to consider a step

resolution of the City Staff reopen the entire issue prior to the Council's final approval